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11
12 IN THE UNITED STATES DISTRICT COURT

13 FOR THE DISTRICT OF ARIZONA

14 John Doe,

No.

15 Plaintiff,

16 vs.

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18 PLAINTIFF'S MOTION FOR
19 PERMISSION TO PROCEED
Defendant.
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ANONYMOUSLY

Paul Penzone, Sheriff of Maricopa
County, Arizona, in his official capacity,
Defendant.

Plaintiff Jason Doe comes before this Court seeking to proceed in anonymity in this matter. Plaintiff respectfully moves this Court to: (1) allow Plaintiff to proceed anonymously in this litigation and (2) order Defendants (including their agents and attorneys), should they discover Plaintiff's true identity, not to publicly disclose them, either in a court filing or otherwise. In support of this Motion, Plaintiff states as follows:

1 **I. INTRODUCTION**

2 Plaintiff Jason Doe is challenging the constitutionality of portions of Arizona Revised
3 Statutes (A.R.S.) §§ 13-3821 and 13-3822, which, *inter alia*, outline the requirements for people
4 who have been convicted of or adjudicated guilty of certain offenses to (1) register as sex offenders
5 (A.R.S. § 13-3821(A) and (G)), (2) register residences (§ 13-3822(A)), (3) notify law enforcement
6 of movement from registered residences (§ 13-3822(A)), and (4) notify law enforcement of online
7 identifiers to communicate on the internet (A.R.S. § 13-3821(P) and A.R.S. § 13-3822(C)).
8 Plaintiff's Complaint alleges that these laws in conjunction and individually deprive Plaintiff of
9 his rights guaranteed by the First, Fifth, Eighth, and Fourteenth Amendments to the United States
10 Constitution.

11 Leave to proceed anonymously should be granted because Plaintiff has a substantial
12 privacy right that outweighs any need for his identity to be disclosed. Plaintiff belongs to perhaps
13 the most reviled group of people in our society – individuals with convictions for sexual offenses.
14 “Nothing provokes more emotionality than sex crimes perpetrated on a child. The public widely
15 regards child sex offenders as the ‘worst of the worst’ and ‘better off dead.’” *May v. Shinn*, 37
16 F.4th 552, 559 (9th Cir. 2022) (Block, J., concurring). Sex offenders face retaliation from members
17 of our community. In light of these unique concerns, courts routinely permit sexual offenders
18 challenging the various laws regulating them to proceed anonymously. *See, e.g., Connecticut Dept.*
19 *of Public Safety v. Doe*, 538 U.S. 1 (2003); *Smith v. Doe*, 538 U.S. 84 (2003); *Does v. Wasden*,
20 982 F.3d 784 (9th Cir. 2020); *Doe v. Harris*, 772 F.3d 563 (9th Cir. 2014); *Doe v. Tandeske*, 361
21 F.3d 594 (9th Cir. 2004). Plaintiff seeks the same treatment here.

1 **II. FACTUAL BACKGROUND**

2 The facts are laid out in greater detail in the Complaint. Of note here, Plaintiff is a
 3 registered sexual offender, whose offense against minors was committed long ago and for which
 4 Plaintiff has completed his sentence. He is currently serving a lifetime probationary period without
 5 any violations. He wishes to challenge the constitutionality of the sex offender registration
 6 requirements under A.R.S. §§ 13-3821(A) and (G), residence registration requirements under
 7 § 13-3822(A), notification of movement from registered residences requirements under § 13-
 8 3822(A), and registration and notification of online identifiers requirements under § 13-3821(P)
 9 and § 13-3822(C). However, he fears the harassment, retaliation, and threats of violence he would
 10 face if forced to publicly reveal his identity in this lawsuit. He also wishes to engage in anonymous
 11 online speech, which the Internet identifier provision bans. Thus, the very anonymity he seeks
 12 would be defeated by forced disclosure here.

13 **III. THE LAW**

14 Federal Rule of Civil Procedure 10(a) requires that the title of the complaint “include the
 15 names of all the parties.” However, “a party may preserve his or her anonymity in judicial
 16 proceedings in special circumstances when the party’s need for anonymity outweighs prejudice to
 17 the opposing party and the public’s interest in knowing the party’s identity.” *Doe I thru XXIII v.*
 18 *Advanced Textile Corp.*, 214 F.3d 1058 (9th Cir. 2000). Challenging government activity is one
 19 such factor that permits anonymity. *Doe v. State of Alaska*, 122 F.3d 1070 (9th Cir. 1997) (*citing*
 20 *Doe v. Stegall*, 653 F.2d 180 (5th Cir. 1981)).¹ When pseudonyms are used to shield the anonymous
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28 ¹ This is an unpublished opinion but was referenced in a “Table of Decisions Without Reported
 Opinions” appearing in the Federal Reporter.

1 party from retaliation, the district court should determine the need for anonymity by evaluating the
2 following factors: (1) the severity of the threatened harm; (2) the reasonableness of the anonymous
3 party's fears; and (3) the anonymous party's vulnerability to such retaliation. *Id.* Plaintiffs are not
4 required to *prove* that threatened retaliation will be carried out, but that a reasonable person would
5 believe that a threat might be carried out. *Id.* Additionally, it is relevant for the Court to consider
6 if the plaintiffs have demonstrated that disclosure will deny them the very relief they seek. *Doe*,
7 122 F.3d 1070. In cases where the plaintiffs have demonstrated a need for anonymity, the district
8 court should use its powers to manage pretrial proceedings, and to issue protective orders limiting
9 the disclosure of the party's name to preserve the party's anonymity to the greatest extent possible
10 without prejudicing the opposing party's ability to litigate the case. *See Fed R. Civ. 16(b), 26(c).*
11 It may never be necessary to disclose the anonymous parties' identities to nonparties to the suit.
12 *Doe I thru XXIII*, 214 F.3d at 1069. Here, these factors weigh in favor of anonymity.

16 IV. ARGUMENT

17 a. Plaintiff is Challenging Government Activity

18 The Plaintiff is challenging government activity by seeking several declarations that
19 portions of the Arizona sex offender registration statutory scheme are unconstitutional, which is a
20 strong factor weighing towards proceeding anonymously. *Doe*, 122 F.3d 1070.

22 b. Plaintiff Will Be Exposed to Threats of Violence and Other Harms

24 Plaintiff fears violent reprisals, grounded in the growing number of reported incidents of
25 vigilantism against registrants. These include an Arizona man who had been accused of child
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1 molestation and was found impaled on a cactus, leading to his death.² In July of 2022, a vigilante
 2 in Indiana killed a registered sex offender by knocking on his door and shooting him when he
 3 answered. The vigilante said he had no remorse and was justified in committing the crime. The
 4 sex offender was actively trying to get removed from the registry when he was killed.³⁴

6 Sadly, “unlawful violence and threats” and other vigilante justice “happen with sufficient
 7 frequency and publicity that registrants justifiably live in fear of them.” *E.B. (A Fictionous Name) v.*
 8 *Verniero*, 119 F.3d 1077, 1102 (3d Cir. 1997), quoted by *Smith v. Doe*, 538 U.S. at 108 (Souter,
 9 J., concurring) (“registrants and their families have experienced profound humiliation and isolation
 10 as a result of the reaction of those notified. Employment and employment opportunities have been
 11 jeopardized or lost. Housing and housing opportunities have suffered a similar fate. Family and
 12 other personal relationships have been destroyed or severely strained. Retribution has been visited
 13 by private, unlawful violence and threats and, while such incidents of ‘vigilante justice’ are not
 14 common, they have with sufficient frequency and publicity that registrants justifiably live in fear
 15 of them”). See also *Doe v. Pataki*, 120 F.3d 1263, 1279 (2d Cir. 1997) (noting “numerous instances
 16 in which sex offenders have suffered harm in the aftermath of notification ranging from public
 17 shunning, picketing, press vigils, ostracism, loss of employment, and eviction, to threats of
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 23 ² Michelle A. Cubellis, *Sex Offender Stigma: An Exploration of Vigilantism against Sex Offenders, Deviant Behavior* (2018), available at
 24 <https://www.tandfonline.com/doi/abs/10.1080/01639625.2017.1420459>.

25 ³ <https://www.azfamily.com/2022/07/29/man-shows-no-remorse-fatally-shooting-registered-sex-offender-deputies-say/>.

26 ⁴ Additionally, in March of 2023, a vigilante in Minnesota beat a registered sex offender in his home
 27 with a shovel and a pair of Moose antlers; the sex offender committed only one sex offense in 1979.
<https://www.azfamily.com/2023/03/11/report-minnesota-man-kills-sex-offender-using-moose-antler-shovel-sheriff-says/>. These are merely examples of the extreme violence a sexual offender can face for
 28 simply being registered.

1 violence, physical attacks, and arson"). The public revelation that one is a sexual offender creates
 2 "increased risk of private violence that can result in damages to one's property or injury to one's
 3 person." *Verniero*, 119 F.3d at 1102.
 4

5 Plaintiff rightly fears harassment and violence if he must disclose his identity to pursue
 6 this legitimate civil rights action. Although he is already on the public registry, Plaintiff – unlike
 7 other registrants – will be a highly visible member of the sex offender community. He is likely to
 8 be viewed not only as a leader of what has been describe as "perhaps the most reviled group of
 9 people in our community," but also as an advocate for lessened restrictions on sex offenders. *Doe*
 10 *v. Nebraska*, 898 F. Supp. 2d 1086, 1121 (D. Neb. 2012). Plaintiff may be wrongly perceived as
 11 trying to escape all sex offender regulations and expose him to unique risks of retaliation beyond
 12 what a normal registrant suffers. Plaintiff will therefore be a unique target for violence and
 13 intimidation. *See Doe v. City of Indianapolis, Ind.*, No 1:12:CV-00062-TWP, 2012 WL 639537,
 14 at 2 (S.D. Ind. Feb. 27, 2012) ("If Plaintiff were named, not only would his past crimes be
 15 highlighted, but he would also be identified as the person challenging the constitutionality of a
 16 statute that was created to protect the public, which could make Plaintiff an even bigger target for
 17 retaliation"). Additionally, potential media coverage generated by this important lawsuit is an
 18 additional concern. *See Doe v. Cnty. of El Dorado*, No. 2:14-CV-01433-KJM, 2013 WL 6230342
 19 at 4 (E.D. Cal. Dec. 2, 2013) (granting sex offenders' motion to proceed anonymously in part
 20 because the suit was "a constitutional challenge with the potential for publicity"). Plaintiff does
 21 not need to *prove* that he faces a danger of physical injury, but rather he must simply show that he
 22 might face such a threat. *Does I thru XXIII*, 214 F.3d 1058.
 23

24 Plaintiff is also vulnerable to such retaliation because, as a registered sex offender, his
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1 address is readily available to members of the public who may wish to extract “justice.” For these
2 reasons, most cases of this type recognize that sexual offenders face significant risk of harm if they
3 proceed in their own names, and it is proper and appropriate to permit them to proceed anonymous.
4

5 **c. Anonymity Poses No Threat of Unfairness to Defendants**

6 This case brings both facial and as applied constitutional challenges to portions of Arizona
7 statutes relating to sex offender registration laws. The case will turn almost entirely on legal issues
8 and the particular facts surrounding Plaintiff himself are largely irrelevant. Plaintiff’s as applied
9 challenges relates to him as a person required to register, and do not touch on the particular
10 circumstances of his prior offenses or personal information such that disclosure of his identity
11 would be required. Moreover, Plaintiff does not seek damages, but rather declaratory relief,
12 making inquiry into his circumstances unnecessary. Disclosure of Plaintiff’s identity is not
13 essential for this case to be adequately prosecuted.
14

15 The public also has no particular need to know Plaintiff’s true identity. All the relevant
16 facts are contained in the pleadings. The public interest will be served by having this case brought
17 to vindicate constitutional rights. *Does I thru XXIII*, 214 F.3d 1058.
18

19 **d. Disclosure Will Deny Plaintiff the Very Relief He Seeks**

20 One purpose of this lawsuit is to secure Plaintiff’s constitutional right to anonymous
21 speech. Forcing him to reveal his true identity would thus strip him of the very anonymity he seeks,
22 exacerbating the injuries this lawsuit seeks to prevent. *Doe*, 122 F.3d 1070. Where, as here,
23 anonymity goes to the heart of the case, Plaintiff should be allowed to proceed anonymously.
24

25 **V. CONCLUSION**

26 Many federal courts have permitted challenges to sex offender laws to proceed
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1 anonymously to protect litigants' safety and privacy. Plaintiff asks this Court to do the same.

2 WHEREFORE, Plaintiff respectfully requests the Court grant this Motion and permit
3 Plaintiff to proceed anonymously. Plaintiff also requests that the Court order Defendants
4 (including their agents and attorneys), should they discover Plaintiff's true identity, not to publicly
5 disclose them, either in a court filing or otherwise. If the Court deems it necessary at some point
6 in the future to disclose his identity to Defendants, Plaintiff would request permission to do so
7 pursuant to a protective order that prohibits disclosure to the public.
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CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2023, I electronically transmitted the attached document to the Clerk's Office using the ECF System for filing.

/s/ Samantha K. DuMond